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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,776	07/26/2001	Hyesook Kim	3087.00005	6900

7590

09/10/2002

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EXAMINER

SNEDDEN, SHERIDAN

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,776

Applicant(s)

KIM ET AL.

Examiner

Sheridan K Snedden

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-3, 10-13 and 15-16 drawn to a method of measuring the polymerization of proteins and kit containing, classified in class 435, subclass 183+.
 - II. Claims 4-9, drawn to a polymerized protein, classified in class 435, subclass 183+.
 - III. Claim 14, drawn to a method of measuring the nitration of cytochrome c, classified in class 435, subclass 4.
 - IV. Claims 17-21, drawn to a method of measuring the amount of oxidized glutathione, classified in class 435, subclass 4.
 - V. Claims 22-28, drawn to a method of administering a reducing agent to a patient, classified in class 514, subclass 18.
 - VI. Claims 29-33, drawn to a reducing agent and a pharmaceutically acceptable carrier, classified in class 514, subclass 18.

Invention I discloses a method for detecting the product of invention II and are thus related. However, the inventions are patentably distinct because the product of invention II need not be present during the detection process and thus the method of invention I can neither utilize the products of invention II nor be used to make such products.

The methods of inventions I and III-V require different products and steps and have different endpoints. Therefore, inventions I, III, IV and V are patentably distinct.

The product of invention VI is not used in the methods of inventions I, III and IV. Therefore, inventions I, III and IV are patentably distinct from invention VI.

The product of invention II is not used in the methods of inventions III-V. Therefore, inventions III-V are patentably distinct from invention II.

Inventions II and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). The polymerized protein of invention II is not shown as capable of use with the pharmaceutical agent of invention VI. Thus the inventions are patentably distinct.

Inventions VI and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, glutathione may be used to inhibit enzymes which otherwise would degrade a product during its recovery and remove certain fractions which contain phosphorous as taught by Penn (US Patent 4,029,768 A).

2. In addition, claim 3 of invention I is directed to patentably distinct and/or independent proteins (or use thereof). Absent factual statement/evidence to the contrary, each different protein is considered distinct and/or independent, one from the other on the basis of physical, chemical and biological properties and function(s). Thus, when invention I is elected under 35 USC 121, an additional election under 35 USC 121 is also required as to the elected protein. This selection of the protein is not a species election.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II thru VI, restriction for examination purposes as indicated is proper.

Advisory Information

4. A telephone call was made to Amy Rinaldo on September 4, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (703) 305-4843. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3975 for regular communications and (703) 746-3975 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS

September 4, 2002

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